

CHAPTER NO. 392**HOUSE BILL NO. 981****By Representative Stanley****Substituted for: Senate Bill No. 1348****By Senator Bryson**

AN ACT to amend Tennessee Code Annotated, Section 9-21-151, relative to the issuance and sale of bonds and notes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-21-151 is amended by deleting such section in its entirety and substituting instead the following:

(a) In addition to the definitions applicable generally to this chapter 21, the following definitions shall be applicable to this section only:

(1) "Advisor" means a financial advisor, swap advisor, or program administrator, with respect to a financial transaction, whether or not such title is used.

(2) "Costs" related to a finance transaction may include, but are not limited to, fees and expenses of advisors, underwriters, placement agents, counterparties, bond and other counsel, paying agents, registrars, trustees, escrow agents, verification agents, credit enhancement and liquidity providers, remarketing and auction agents, rating agencies, printing and advertising, and other similar fees and expenses, whether or not payable at issuance.

(3) "Debt obligation" means bonds, notes, lease purchase agreements, loan agreements, and any other evidence of indebtedness lawfully issued, executed or assumed by a public entity.

(4) "Derivative" means an interest rate agreement as defined in Section 9-22-103 and such other transactions related to debt obligations as identified by the state funding board.

(5) "Finance transaction" means debt obligations, derivatives, or both.

(6) "Public entity" means the state, a state agency, a local government, or a local government instrumentality.

(7) "Public finance professional" means an advisor, underwriter, placement agent, counterparty, bond counsel, issuer's counsel, or other person or entity advising the public entity with respect to a finance transaction or offering to provide professional services with respect to such transaction.

(8) "State funding board" means the state funding board created pursuant to chapter 9 of this title.

(b) The funding board, after consultation with public entities and public finance professionals, shall adopt policy, procedures, and forms to be used for filings required by this section. The state funding board is authorized to exempt from the filing requirements of this section any finance transaction:

(1) deemed de minimus by the board,

(2) where the public entity is required by statute to participate in the financing program,

(3) that is a conduit transaction for a non-governmental entity, or

(4) the disclosure of costs of such transaction are deemed not consistent with the public disclosure intent of this section.

(c)

(1) Before the later of the date on which a finance transaction is authorized by a public entity and of the date on which the public entity commits to payment of fees to a public finance professional in connection with such finance transaction, a public finance professional shall file with the public entity (including any governing body), with a copy to the director:

(A) the estimated costs, whether payable at issuance or continuing, for such finance transaction and

(B) the identification of any financial relationships between public finance professionals and any anticipated service providers.

The filing shall be made in accordance with the procedures adopted by the state funding board.

(2) The state funding board shall provide further clarification of the responsibility of the various public finance professionals for the filing for situations where a public entity has obtained the services of more than one public finance professional with respect to the finance transaction; it is the legislative intent that there be clear public disclosure of finance transaction estimates provided by public finance professionals on which public entities make decisions.

(d)

(1) Not later than forty-five (45) days following the issuance or execution of a finance transaction by or on behalf of any public entity, such public entity shall submit, or cause to be submitted, to the governing body of the public entity with a copy to the director:

(A) A brief description of the finance transaction;

- (B) The issuance and continuing costs of the finance transaction;
- (C) A copy of the information return filed with the federal IRS, if applicable;
- (D) A description of any continuing disclosure obligations with respect to the finance transaction;
- (E) A copy of the offering document, if any; and
- (F) Such other information as may be required by the state funding board.

(e)

(1) Upon discovery by the public entity of:

(A) a failure to file, or an omission in the filing of, the information required by this section, or

(B) of an error in the filing required by subsection (d), the public entity may immediately request permission from the director to permit a late filing of such information. In addition, upon discovery by the director of an omission or filing failure or of an error in the subsection (d) filing, the director shall notify the public entity of such non-compliance. The public entity shall submit the required information, along with an explanation for the non-compliance, within fifteen (15) days following its discovery or notice by the director.

(2) The director shall maintain a list of all finance transactions discovered pursuant to subdivision (e)(1) as not complying with the requirements of this section, along with a description of the nature of the non-compliance. The director shall also maintain lists of all public entities which have failed to respond to the director's notification of failure to file and of public finance professionals involved in such filing failures. The lists of entities which have failed to comply with the requirements of this section shall be a public record. Upon receipt of the information required for any finance transaction for which such information is non-compliant, the director shall remove the public entity from the list and notify the public entity of its removal. The identification of any public finance professional involved in a non-compliant filing shall not be removed for at least two (2) years. If a public entity is on the director's list of public entities which have failed to comply with this section, no finance transactions may be issued by such public entity until the director has removed such public entity from the list.

SECTION 2. For purposes of the state funding board adopting policy, procedures, and forms as required by Section 1(b), this act shall be effective upon the act becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2005, or 30 days after adoption by the state funding board of filing forms, whichever is later, the public welfare requiring it.

PASSED: May 24, 2005


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 9th day of June 2005


PHIL BREDESEN, GOVERNOR